

Judge McGovern

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

THE UNITED STATES OF AMERICA and  
THE PEOPLE OF THE STATE OF  
WASHINGTON,

Plaintiffs,

and

THE STANDARD EQUIPMENT COMPANY,  
INC.,

Plaintiff in  
Intervention,

v.

THE WESTERN PROCESSING COMPANY,  
INC.; GARMT J. NIEUWENHUIS;  
AT&T TECHNOLOGIES, INC.;  
ACME INTER-CITY FREIGHTLINES;  
ADVANCE ELECTROPLATING, INC.;  
ADVANCE HARD CHROME, INC.;  
AIRO SERVICES, INC.;  
ALASKAN COPPER WORKS;  
ALCAN CANADA PRODUCTS LIMITED;  
AMERICAN BOILER WORKS;  
AMERICAN CAN COMPANY;  
AMERICAN TAR COMPANY;  
AMFAC DISTRIBUTION CORPORATION,  
ATEX, INC., as successor to  
Automix Keyboards, Inc. (AKI);  
ATLANTIC RICHFIELD COMPANY;  
THE AUSTIN COMPANY, Northwest  
District;  
AUTO WAREHOUSING CO.;  
AVTECH CORPORATION;  
THE BARTHEL COMPANY;  
BASF CORPORATION, Inmont Division;

*Civil Action #*

NO. - C83-252M

THIRD AMENDED AND  
SUPPLEMENTAL COMPLAINT

USEPA SF



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THIRD AMENDED AND  
SUPPLEMENTAL COMPLAINT - 1  
(5155B)

UNITED STATES ATTORNEY  
3600 Seafirst Fifth Avenue Plaza  
Seattle, WA 98104  
(206) 442-7970

1 J.H. BAXTER AND CO.; )  
 BAYLINER MARINE CORP.; )  
 2 BELLEVUE SCHOOL DISTRICT #405; )  
 BEMIS COMPANY, INC.; )  
 3 BETHLEHEM STEEL CORPORATION; )  
 H.W. BLACKSTOCK COMPANY; )  
 4 THE BOEING COMPANY; )  
 BORDEN, INCORPORATED; )  
 5 BURLINGTON-EDISON HIGH SCHOOL; )  
 CALGON CORPORATION; )  
 6 CAM INDUSTRIES, INC.; )  
 CASCADE PLATING & MACHINE, INC.; )  
 7 CASCADE POLE COMPANY; )  
 CHAMPION INTERNATIONAL CORPORATION; )  
 8 CHEMCENTRAL/SEATTLE; )  
 CHEMITHON CORPORATION; )  
 9 CHEVRON U.S.A., INC.; )  
 CHROMIUM, INC.; )  
 10 CIRCUIT SERVICES, INC.; )  
 CITY OF SUMNER FIRE DEPARTMENT; )  
 11 COLOR YOUR WORLD, INC.; )  
 CONTAINER CORPORATION OF AMERICA; )  
 12 DATA I/O; )  
 DEPARTMENT OF LABOR AND )  
 13 INDUSTRIES, STATE OF WASHINGTON; )  
 DEPARTMENT OF NATURAL RESOURCES, )  
 14 STATE OF WASHINGTON; )  
 THE DOW CHEMICAL COMPANY; )  
 15 DRESSER INDUSTRIES, INC.; )  
 EMF; )  
 16 ECONOMICS LABORATORY, INC.; )  
 EVERGREEN INDUSTRIES, INC.; )  
 17 EXXON COMPANY, U.S.A., a Division )  
 of EXXON; )  
 18 ROBERT D. FARSTER CO.; )  
 FEDERAL TRANSFER CO., INC.; )  
 19 FENTRON BUILDING PRODUCTS CO.; )  
 B.C. FERRY CORPORATION; )  
 20 FINISHING UNLIMITED, INC.; )  
 FLECTO/VANGUARD COATINGS; )  
 21 FLOW INDUSTRIES, INC.; )  
 JOHN FLUKE MANUFACTURING CO., INC.; )  
 22 FREIGHT SPEED, INC.; )  
 FRUEHAUF DIVISION; )  
 23 THE FURNITURE BATH; )  
 FUTURA HOME PRODUCTS; )  
 24 GM NAMEPLATE, INC.; )  
 GENERAL ELECTRIC CO.; )  
 25 GENERAL PLASTICS MFG. CO.; )  
 W.R. GRACE AND CO.; )  
 26 GREYHOUND CORPORATION (PUREX); )

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28

THIRD AMENDED AND  
 SUPPLEMENTAL COMPLAINT - 2  
 (5155B)

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1 GUARDSMAN CHEMICALS, INC.; )  
 HEATH TECNA AEROSPACE CO.; )  
 2 HIGHLINE COMMUNITY COLLEGE; )  
 HITCO; )  
 3 HONEYWELL, INC.; )  
 GEO. A. HORMEL & COMPANY; )  
 4 HYGRADE FOOD PRODUCTS CORPORATION; )  
 HYTEC, INC.; )  
 5 HYTEK FINISHES CO.; )  
 INDUSTRIAL PLATING CORPORATION; )  
 6 INTALCO ALUMINUM CORPORATION; )  
 JARVIE PAINT MFG. CO., INC.; )  
 7 K.M.E., INC.; )  
 KENT PUBLIC SCHOOLS NO. 415; )  
 8 L.F.R. KNUDSON COMPANY; )  
 LAKE UNION DRYDOCK COMPANY; )  
 9 LAWRENCE ELECTRONICS CO.; )  
 HAROLD LE MAY ENTERPRISES, INC.; )  
 10 LEBER INK CO.; )  
 HARRY LUNSTEAD DESIGNS; )  
 11 LYNDEN TRANSPORT, INC.; )  
 MANNESMANN TALLY; )  
 12 MARINE INDUSTRIES NORTHWEST, INC.; )  
 MARINE IRON WORKS, INC.; )  
 13 J.M. MARTINAC SHIPBUILDING CORP.; )  
 MTH FINISHERS, INC.; )  
 14 MCCALL OIL AND CHEMICAL CORP.; )  
 METAL FINISHERS, a Division of )  
 15 Steel Products, Inc.; )  
 METAL MARINE PILOT, INC.; )  
 16 MOBILE OIL CORPORATION; )  
 MONITOR MOLDED PRODUCTS; )  
 17 MONSANTO COMPANY; )  
 MORTON THIOKOL, INC.; )  
 18 MUNICIPALITY OF METROPOLITAN )  
 SEATTLE (METRO Seattle); )  
 19 NATIONAL CAN CORPORATION; )  
 NATIONAL PAPER BOX DIVISION OF )  
 20 SOMERVILLE BELKIN INDUSTRIES, LTD.; )  
 NEMCO ELECTRIC CO., INC.; )  
 21 NORTHWEST METAL PRODUCTS CO.; )  
 NORTHWEST PLATING COMPANY; )  
 22 OCCIDENTAL CHEMICAL CORPORATION; )  
 OMARK INDUSTRIES, INC.; )  
 23 OWENS-CORNING FIBERGLAS CORP.; )  
 OXYGEN SALES & SERVICES, INC.; )  
 24 PTL-INSPECTORATE, INC.; )  
 PACIFIC CAR AND FOUNDRY CO., )  
 25 a Division of PACCAR, Inc.; )  
 PACIFIC METALLURGICAL, INC.; )  
 26 PACIFIC PROPELLER, INC.; )  
 27  
 28

1 PACIFIC WESTERN ENGINEERING; )  
 PENNWALT CORPORATION; )  
 2 PIRELLI CABLES, INC.; )  
 PHYSIO-CONTROL CORPORATION; )  
 3 THE PITTSBURGH AND MIDWAY COAL )  
 MINING COMPANY; )  
 4 PRECISION ENGINEERING, INC.; )  
 QUALITY FINISHING, INC.; )  
 5 RATELCO, INC.; )  
 RED DOT CORPORATION; )  
 6 RENTON ISSAQUAH AUTO FREIGHT; )  
 RESOURCE RECOVERY, INC.; )  
 7 REYNOLDS METALS COMPANY; )  
 R.W. RHINE, INC.; )  
 8 RHONE-POULENC, INC.; )  
 RIC'S TRANSFER CO., INC.; )  
 9 RIDGWAY PACKAGING CORP.; )  
 ROCKET RESEARCH COMPANY; )  
 10 RUDD COMPANY, INC.; )  
 SAFETY-KLEEN CORP.; )  
 11 SANMINA CORPORATION; )  
 SANTA CLARA CIRCUITS NORTH, INC., )  
 12 SCOTT PAPER COMPANY; )  
 SEATTLE DISPOSAL COMPANY; )  
 13 SEATTLE TIMES; )  
 SHELL OIL; )  
 14 JOSEPH SIMON & SONS, INC.; )  
 SIMPSON TIMBER COMPANY; )  
 15 SOUND CASKET MFG. CO.; )  
 SOUND DELIVERY SERVICE; )  
 16 SPERRY CORPORATION; )  
 STAVELEY ENTERPRISES (British )  
 17 Columbia), INC.; )  
 STEEL PRODUCTS, INC.; )  
 18 STORES DELIVERY SERVICE, INC., )  
 d/b/a SOUND DELIVERY SERVICE; )  
 19 STUART AUTOPRODUCTS; )  
 SUNSTRAND CORPORATION; )  
 20 SURF TECH FINISHES; )  
 TACOMA MOVING & STORAGE; )  
 21 TAM ENGINEERING CORP.; )  
 TAYLORS AUTO BODY; )  
 22 TELTONE CORPORATION; )  
 TEKTRONIX, INC.; )  
 23 TODD PACIFIC SHIPYARDS CORP.; )  
 TRANSCO INDUSTRIES, INC.; )  
 24 TRI-WAY INDUSTRIES, INC.; )  
 TYEE AIRCRAFT, INC.; )  
 25 U.S. OIL & REFINING CO.; )  
 UNITED DRAIN OIL; )  
 26 UNITED SERVICES; )

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THIRD AMENDED AND  
 SUPPLEMENTAL COMPLAINT - 4  
 (5155B)

UNITED STATES ATTORNEY  
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 (206) 442-7970

1 UNITED TRANSPORTATION COMPANY; )  
UNIVERSAL PAINT PRODUCTS, INC.; )  
2 UNIVERSAL PLASTICS CO.; )  
UNIVERSITY OF OREGON; )  
3 UNIVERSITY OF PUGET SOUND; )  
UNIVERSITY OF WASHINGTON; )  
4 VALLEY ENAMELING; )  
VALLEY MEDICAL CENTER; )  
5 VAN VETTER, INC.; )  
VAN WATERS & ROGERS, a Division )  
6 of Univar Corp.; )  
VANPORT INDUSTRIES, INC.; )  
7 VIOX CORPORATION; )  
WES PLASTICS; )  
8 WESTERN FURNACES; )  
WESTERN GEAR MACHINERY CO.; )  
9 WESTERN PNEUMATIC TUBE CO.; )  
WESTERN WOOD PRESERVING CO.; )  
10 WEYERHAEUSER COMPANY; )  
YORK INTERNATIONAL CORP.; )  
11 ZEHRUNG CORPORATION; )  
ZEPEDA INSTRUMENTS; )  
12 )  
and )  
13 )  
14 ANCHOR POST PRODUCTS, INC.; )  
ASKO PROCESSING, INC.; )  
CANRON, INC.; )  
15 DAVIS WALKER CORPORATION; )  
LOCKHEED SHIPBUILDING CO.; )  
16 NORTHWEST STEEL ROLLING MILLS, )  
INC.; )  
17 PRECISION CASTPARTS CORPORATION; )  
RSR CORPORATION; and )  
18 UNION OIL COMPANY OF CALIFORNIA, )  
19 )  
Defendants. )  
20 )

21 The United States of America, on behalf of the United States  
22 Environmental Protection Agency ("EPA"), by its attorney, Gene S.  
23 Anderson, United States Attorney for the Western District of  
24 Washington, and the People of State of Washington, ex rel.  
25 Kenneth O. Eikenberry, the Attorney General of the State of  
26 Washington, by their attorneys allege:  
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1           1. This is a civil action concerning the Western  
2 Processing site in Kent, Washington, brought under the  
3 Comprehensive Environmental Response, Compensation, and Liability  
4 Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq.; the Resource  
5 Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, et  
6 seq.; and Section 309 of the Clean Water Act ("CWA"), 33 U.S.C.  
7 § 1319, against defendants Western Processing Company, Inc., and  
8 Garnt J. Nieuwenhuis (the "owner/operator defendants") and  
9 against the other companies listed in the caption of this  
10 Complaint (the "generator" and "transporter" defendants).  
11 Pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and  
12 9607, plaintiffs seek access and entry to the site and reimburse-  
13 ment for funds spent for investigative and response activities.  
14 Plaintiffs also seek equitable relief concerning an imminent and  
15 substantial endangerment to the public health or welfare or the  
16 environment pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.  
17 Plaintiffs also seek civil penalties and punitive damages from  
18 the owner/operator defendants for non-compliance with an  
19 Administrative Order issued pursuant to Section 106 of CERCLA,  
20 42 U.S.C. § 9606. Under RCRA, plaintiffs seek to enjoin the  
21 owner/operator defendants from violating the Interim Status  
22 Standards promulgated pursuant to Section 3004, 42 U.S.C. § 6924,  
23 and to compel the owner/operator defendants to comply with  
24 requirements of two Administrative Orders issued by EPA pursuant  
25 to Section 3013, 42 U.S.C. § 6934, requiring the provision of  
26 information and the reimbursement of EPA's sampling and  
27  
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1 analytical expenditures. The United States also seeks civil  
2 penalties against the owner/operator defendants pursuant to  
3 Sections 3008 and 3013 of RCRA, 42 U.S.C. §§ 6928 and 6934. In  
4 addition, under Section 309 of the CWA, 33 U.S.C. § 1319, the  
5 United States seeks to enjoin the owner/operator defendants from  
6 discharging pollutants into a navigable water except as  
7 authorized by permit and civil penalties for unlawful discharges.  
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#### 10 JURISDICTION

11 2. This Court has jurisdiction of the subject matter of  
12 this claim pursuant to 28 U.S.C. §§ 1331, 1345, and 1355,  
13 42 U.S.C. §§ 6928, 6973, 9604, 9606, 9607, and 9613, and  
14 33 U.S.C. § 1319. The State of Washington has been notified of  
15 the commencement of this action pursuant to 33 U.S.C. § 1319 and  
16 42 U.S.C. § 6973, and is a plaintiff in this action. The Court  
17 has pendent jurisdiction over the claims of the People of the  
18 State of Washington made pursuant to Washington law.

#### 19 GENERAL ALLEGATIONS

20 3. Defendant Western Processing Company, Inc. ("Western  
21 Processing"), is a domestic chemical reclaiming and recycling  
22 business incorporated in the State of Washington. Western  
23 Processing owned and operated and owns and operates a facility  
24 for the treatment, storage and disposal of hazardous wastes and  
25 hazardous substances on a site of approximately thirteen acres at  
26 or near 7215 South 196th Street in Kent, Washington, herein  
27  
28

1 referred to as the Western Processing site, the site, or the  
2 facility.

3 4. Garmt J. Nieuwenhuis is and was at all times relevant  
4 to this complaint the manager and an operator of the Western  
5 Processing facility. In addition, Garmt J. Nieuwenhuis was and  
6 is Chairman of the Board of Directors of Western Processing  
7 Company, Inc., and during a portion of the period relevant to  
8 this complaint, Garmt J. Nieuwenhuis was President of Western  
9 Processing. Defendant Garmt J. Nieuwenhuis, at all times  
10 relevant to this complaint, has actively, regularly and  
11 personally participated in and controlled activities relevant to  
12 this complaint conducted at the Western Processing site.

13 5. Generator defendants, each doing business in  
14 Washington, by contract, agreement, or otherwise, arranged for  
15 disposal or treatment, or arranged with a transporter for  
16 transport for disposal or treatment, of hazardous substances  
17 owned or possessed by such person, at facilities owned and  
18 operated by parties other than generator defendants. Hazardous  
19 substances from generator defendants were delivered to and  
20 stored, or disposed at the Western Processing site. Transporter  
21 defendants, each doing business in Washington, accepted hazardous  
22 substances for transport to disposal or treatment facilities.  
23 They selected the Western Processing site, and transported  
24 hazardous substances there.

25 6. The general area around the Western Processing site is  
26 used for commercial, industrial, agricultural, and residential  
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1 purposes. A creek known as Mill Creek crosses the western  
2 portion of the site and drains into the Green River which drains  
3 into Puget Sound. Mill Creek receives surface water runoff from  
4 the site. Underlying the site is a water-bearing geological zone  
5 (aquifer), the upper limit of which is about five to ten feet  
6 below land surface. The aquifer discharges into Mill Creek.  
7 Beneath the upper portions of the aquifer is a discontinuous  
8 series of clay lenses, and beneath the lenses, the deeper  
9 portions of the aquifer. The City of Kent, Washington, has  
10 drilled wells into the deeper portions of the aquifer less than a  
11 mile from the site in an attempt to develop a drinking water  
12 supply for the City. Mill Creek, the Green River, Puget Sound  
13 and the aquifer beneath the site are parts of the environment and  
14 natural resources. A jogging and bicycle path used by the public  
15 abuts the property to the east of the site, an unoccupied  
16 residence is across the street from the northern boundary of the  
17 site, and there are several residences near Mill Creek downstream  
18 from the site.

19 7. The owner/operator defendants' activities at the  
20 Western Processing site included at relevant times:

21 a. Large bulk tanks, 55 gallon drums and smaller  
22 containers of industrial chemical wastes were received at the  
23 Western Processing facility from generators and transporters in  
24 and around Seattle and other locations in the State of  
25 Washington, other western States, and Canada;  
26  
27  
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1           b. Industrial chemical wastes so received at Western  
2 Processing either were or contained halogenated and  
3 non-halogenated spent solvents, spent acids, caustics, heavy  
4 metals, oils and other toxic constituents. The chemical wastes  
5 included hazardous wastes and hazardous substances. The wastes  
6 were stored and were subjected to various treatment, recovery and  
7 disposal processes, including but not limited to distillation,  
8 separation, neutralization, destruction and sedimentation;

9           c. Recovered chemicals were repackaged and stored  
10 on-site for potential resale;

11           d. The non-reusable residues from the processing of  
12 the industrial chemical wastes were disposed of on-site, stored  
13 on-site or shipped elsewhere for disposal;

14           e. Processing or storage took place on the site in  
15 approximately forty large bulk tanks (some containing ignitable  
16 or toxic spent solvent mixtures and residues) and in a system of  
17 surface impoundments; and

18           f. Numerous drums (many containing ignitable spent  
19 solvents) were located at Western Processing. Prior to the  
20 initiation of responsive actions in April 1983, there were some  
21 4,000 to 5,000 drums, most crowded closely together in various  
22 groups. Some drums were supported by pallets, but most were  
23 resting on the soil surface and many were leaning on other drums  
24 or were damaged and others were corroded by the wastes within, by  
25 previous contents, by exposure to the elements or by chemicals  
26 transferred to the outside of the drums from other drums whose  
27

1 contents had leaked or been spilled. Chemical wastes in some  
2 drums had leaked out either onto other drums or onto the ground.  
3 Some of the drums were labeled or marked to indicate their  
4 contents while others were not. At various times and places on  
5 the site, there were or have been puddles of liquid which  
6 contained unknown and possibly toxic chemical residues.

7

8

FIRST CLAIM

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8. The allegations of paragraphs 1 through 7 are realleged.

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9. Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604

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and 9607(a), provide in pertinent part:

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104(a)(1). Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant, at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, . . .

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104(b). Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease or complaints thereof may be attributable to exposure to a hazardous substance, pollutant,

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1 or contaminant and that a release may have  
2 occurred or be occurring, he may undertake  
3 such investigations, monitoring, surveys,  
4 testing, and other information gathering as he  
5 may deem necessary or appropriate to identify  
6 the existence and extent of the release or  
7 threat thereof, the source and nature of the  
8 hazardous substances, pollutants or  
9 contaminants involved, and the extent of  
10 danger to the public health or welfare or to  
11 the environment. In addition, the President  
12 may undertake such planning, legal, fiscal,  
13 economic, engineering, architectural, and  
14 other studies or investigations as he may deem  
15 necessary or appropriate to plan and direct  
16 response actions, to recover the costs  
17 thereof, and to enforce the provisions of this  
18 Act.

19 107(a). Notwithstanding any other provision  
20 or rule of law, and subject only to the  
21 defenses set forth in subsection (b) of this  
22 section

23 (1) the owner and operator of a vessel  
24 . . . or a facility,

25 (2) any person who at the time of  
26 disposal of any hazardous substance owned  
27 or operated any facility at which such  
28 hazardous substances were disposed of,

(3) any person who by contract,  
agreement, or otherwise arranged for  
disposal or treatment, or arranged with a  
transporter for transport for disposal or  
treatment, of hazardous substances owned  
or possessed by such person, by any other  
party or entity, at any facility owned or  
operated by another party or entity and  
containing such hazardous substances, and

(4) any person who accepts or accepted  
any hazardous substances for transport to  
disposal or treatment facilities or sites  
selected by such person, from which there  
is a release, or a threatened release  
which causes the incurrence of response  
costs, of a hazardous substance, shall be  
liable for--

1 (A) all costs of removal or  
2 remedial action incurred by the  
3 United States Government . . . not  
4 inconsistent with the National  
5 Contingency Plan;

6 10. The Administrator of EPA is the President's delegate  
7 under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and  
8 (b), pursuant to Section 2(e) of Exec. Order No. 12316, 46 Fed.  
9 Reg. 42237 (Aug. 14, 1981), and its predecessor Exec. Order  
10 No. 12286, 46 Fed. Reg. 9901 (Jan. 19, 1981). The Administrator  
11 has redelegated this authority.

12 11. The term "facility" is defined in Section 101(9) of  
13 CERCLA, 42 U.S.C. § 9601(9), as:

14 (A) any building, structure,  
15 installation, equipment, pipe or pipeline  
16 (including any pipe into a sewer or publicly  
17 owned treatment works), well, pit, pond,  
18 lagoon, impoundment, ditch, landfill, storage  
19 container, motor vehicle, rolling stock, or  
20 aircraft, or

21 (B) any site or area where a hazardous  
22 substance has been deposited, stored, disposed  
23 of, or placed, or otherwise come to be  
24 located; but does not include any consumer  
25 product in consumer use or any vessel . . .

26 12. The Western Processing site is a facility within the  
27 meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

28 13. "Hazardous substance" is defined by Section 101(14) of  
CERCLA, 42 U.S.C. § 9601(14), as follows:

(A) any substance designated pursuant to  
section 311(b)(2)(A) of the Federal Water  
Pollution Control Act, (B) any element,  
compound, mixture, solution, or substance  
designated pursuant to section 102 of this  
Act, (C) any hazardous waste having the  
characteristics identified under or listed

1 pursuant to section 3001 of the Solid Waste  
2 Disposal Act (but not including any waste the  
3 regulation of which under the Solid Waste  
4 Disposal Act has been suspended by Act of  
5 Congress), (D) any toxic pollutant listed  
6 under section 307(a) of the Federal Water  
7 Pollution Control Act, (E) any hazardous air  
8 pollutant listed under section 112 of the  
9 Clean Air Act, and (F) any imminently  
10 hazardous chemical substance or mixture with  
11 respect to which the Administrator has taken  
12 action pursuant to section 7 of the Toxic  
13 Substances Control Act . . . .

14 14. The term "release" is defined in Section 101(22) of  
15 CERCLA, 42 U.S.C. § 9601(22), in pertinent part as:

16 any spilling, leaking, pumping, pouring,  
17 emitting, emptying, discharging, injecting,  
18 escaping, leaching, dumping, or disposing into  
19 the environment . . . .

20 15. The term "disposal" as defined in Section 101(29) of  
21 CERCLA, 42 U.S.C. § 9601(29), has the same meaning as provided in  
22 Section 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903,  
23 which states:

24 (3) The term "disposal" means the discharge,  
25 deposit, injection, dumping, spilling,  
26 leaking, or placing of any solid waste or  
27 hazardous waste into or on any land or water  
28 so that such solid waste or hazardous waste or  
any constituent thereof may enter the  
environment or be emitted into the air or  
discharged into any waters, including ground  
waters.

16. A preliminary monitoring, testing, and analysis program  
at the Western Processing site to determine the extent and nature  
of soil and groundwater contamination was conducted by EPA  
beginning in or about October 1982. The program included  
sampling of 30 groundwater monitoring wells (24 on-site wells,

1 five downgradient off-site wells and one upgradient off-site well  
2 to determine background levels). Soil samples from the surface  
3 and several berms constructed on the site were also taken.

4 17. The results of the program showed that chemicals,  
5 including hazardous substances, as well as pollutants and  
6 contaminants which may present an imminent and substantial danger  
7 to the public health or welfare, have been released and/or  
8 disposed of at the site into the environment. The chemicals have  
9 leached or otherwise migrated into and contaminated the soil and  
10 aquifer beneath the site and off the site. Further releases were  
11 and are substantially threatened.

12 18. The groundwater beneath the site contained 32 priority  
13 pollutants (see 40 C.F.R. § 401.15), all in measurable quantities  
14 and some (e.g., chromium and trichloroethylene) in individual  
15 concentrations in excess of two hundred thousand parts per  
16 billion (micrograms per liter or ppb). At least eight of the 32  
17 groundwater pollutants are carcinogens and at least two are  
18 suspected carcinogens. Samples from the off-site downgradient  
19 wells contained 20 of the 32 priority pollutants found on-site in  
20 similarly high concentrations. In comparison, the off-site,  
21 upgradient background well yielded only 5 priority pollutants.

22 19. The soil on and beneath the site contained 49 priority  
23 pollutants, some in extremely high concentrations. Included in  
24 the 49 priority pollutants measured are at least nine carcinogens  
25 and 12 suspected carcinogens.

1       20. Many of the hazardous substances found in soil and  
2 groundwater beneath the site have also been detected in Mill  
3 Creek (surface water and sediments). These include 41 priority  
4 pollutants and two non-priority pollutants. Eleven of the  
5 priority pollutants detected are known carcinogens and eight are  
6 suspected carcinogens. Of the 45 total specific pollutants  
7 detected in Mill Creek, only two have not been reported as  
8 detected on site.

9       21. The hazardous substances present on the site, which  
10 were released and threatened to be released into the environment,  
11 including the soil, groundwater and/or Mill Creek, and which  
12 prior to the conclusion of the Federal surface response action  
13 that began on or about April 15, 1983, also threatened to be  
14 exposed to humans entering on the surface of the site or to be  
15 released in a fire or explosion, include but are not limited to:

16       a. Polychlorinated Biphenyls (PCBs)

17               Polychlorinated biphenyls (PCBs) are a group of  
18 chemicals which have been demonstrated to cause cancer in animals  
19 and are suspected human carcinogens. PCBs can cause liver  
20 damage, skin pigmentation and chloracne. PCBs can cross the  
21 placenta to a fetus and can concentrate in mother's milk. PCBs  
22 may decrease fertility. PCBs can increase the amount of certain  
23 enzymes which are found in the liver, lungs, and skin; this  
24 increased level may increase the toxicological hazard of other  
25 chemicals. PCBs bioaccumulate, i.e., are retained in human and  
26

1 animal tissues at concentrations in excess of exposure levels.  
2 PCB's are extremely stable and persistent in the environment.

3 EPA has determined in its Ambient Water Quality  
4 Criteria (See 45 Fed. Reg. 79318, et seq., (Nov. 28, 1980)  
5 ("WQC")) that 0.079 ppt (parts per trillion) of PCBs would be  
6 expected to produce one additional case of cancer per million  
7 people. For carcinogens, the criteria for maximum human health  
8 protection are zero, reflecting the fact that there is no  
9 scientific basis for estimating "safe" levels for carcinogens.

10 PCB concentrations were found in numerous soil  
11 samples from the Western Processing site, at levels as high as  
12 19,000 ppb, with several other samples exceeding 2000 ppb. There  
13 is a potential for PCBs to be found in surface water runoff from  
14 the site into Mill Creek.

15 b. Chloroform

16 Chloroform is a carcinogen which also seriously  
17 affects several vital body functions. Chloroform causes  
18 depression of the central nervous system, destruction of liver  
19 cells, kidney damage, harmful alteration of blood chemistry and  
20 cardiac problems, such as arrhythmia.

21 EPA's Ambient Water Quality Criterion for  
22 chloroform is zero. The level of exposure to chloroform which  
23 can be expected to pose a cancer rate of one additional case per  
24 one million people exposed is 0.21 ppb. Chloroform  
25 concentrations were found in levels as high as 27,000 ppb in  
26 groundwater samples from the Western Processing site.

1 c. Benzene

2 Benzene exposure has been linked to leukemia in  
3 humans. It is implicated as being a mutagen (causing changes in  
4 genes in organisms that are perpetuated in subsequent cell  
5 divisions) and a mitotic poison (affecting the process of cell  
6 division by which cells replicate). Benzene can affect the bone  
7 marrow and blood-forming systems and cause blood disorders, such  
8 as either leukemia or a decrease in certain types of blood  
9 cells. Benzene can affect the central nervous system and cause  
10 respiratory failure, circulatory collapse, and death. The  
11 toxicity of benzene may be influenced by synergistic interaction  
12 with chlorinated hydrocarbons.

13 EPA has determined in its Ambient Water Quality  
14 Criterion that 0.67 ppb would be expected to produce one  
15 additional case of cancer per million people. Benzene  
16 concentrations were found in levels as high as 2200 ppb in  
17 groundwater samples from the Western Processing site.

18 Additionally, benzene presents a threat to human  
19 safety through fire. The closed cup flash point of benzene is  
20 very low: 12 degrees Fahrenheit.

21 d. 1,2-Dichloroethane

22 1,2-Dichloroethane has been shown to cause cancer  
23 in laboratory animals. Animal carcinogens are suspect human  
24 carcinogens. Laboratory tests have shown that 1,2-dichloroethane  
25 is mutagenic. Acute exposure to 1,2-dichloroethane depresses the  
26  
27

1 central nervous system causing nausea, headaches, unconscious-  
2 ness and ultimately death.

3 Repeated exposure of workers to 1,2-dichloroethane  
4 has been associated with loss of appetite, nausea, abdominal  
5 pain, injury to the liver and kidneys, and neurological disorders.

6 EPA Ambient Water Quality Criteria states that  
7 0.94 ppb would be expected to result in one additional case of  
8 cancer per million people. 1,2-dichloroethane concentrations  
9 were found in levels as high as 16,000 ppb in ground water  
10 samples from the Western Processing site.

11 Additionally, 1,2-dichloroethane is dangerous when  
12 heated to decomposition. It emits highly toxic fumes of phosgene  
13 and can react vigorously with oxidizing materials and emit vinyl  
14 chloride and hydrochloric acid.

15 e. Benzo-a-anthracene and Benzo-b-fluoranthene

16 Benzo-a-anthracene is a very potent chemical  
17 carcinogen. Acute and chronic exposure to this chemical can also  
18 induce enzyme activity in various tissues, suppress the body's  
19 immune system, and cause damage to various blood forming and  
20 reproductive tissues, as well as to epithelial cells in general.  
21 The chemical is also strongly mutagenic. A soil sample contained  
22 884,000 ppb of this compound, which is the equivalent of nearly  
23 one-tenth of one percent of the soil sample. Also present at  
24 200,000 ppb in the same soil sample was the related chemical,  
25 benzo-b-fluoranthene, which is also strongly carcinogenic.

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1 f. Trichloroethylene

2 Trichloroethylene has been shown to cause cancer  
3 in mice and was found in 23 of the wells tested. Acute exposure  
4 to trichloroethylene causes depression and narcosis of the  
5 central nervous system, resulting in visual disturbance,  
6 confusion, lack of coordination and fatigue. It is also  
7 associated with cardiac changes such as arrhythmia and  
8 ventricular fibrillation. EPA's ambient Water Quality Criterion  
9 provides that 2.7 ppb of trichloroethylene would be expected to  
10 result in one additional case of cancer per million people.  
11 Trichloroethylene concentrations were found to be as high as  
12 210,000 ppb in groundwater samples from the Western Processing  
13 site. Soil sample concentrations were as high as 580,000 ppb.

14 g. Polynuclear Aromatic Hydrocarbons

15 Soil samples from the site also contained very  
16 high levels of several other suspected carcinogens, known as  
17 polynuclear aromatic hydrocarbons, which belong to the same  
18 chemical class as benzo-a-anthracene and benzo-b-fluoranthene  
19 mentioned previously. These included, among others: phenanthrene  
20 (20 million ppb), naphthalene (6,200,000 ppb), fluorene  
21 (8,600,000 ppb), chrysene (1,210,000 ppb), and pyrene (16,000,000  
22 ppb). These compounds produce neoplastic effects (tumors) in  
23 laboratory animals and are easily absorbed into the body by all  
24 exposure routes.

1           h.   Phenol

2           Phenol was also found in 12 water samples, with a  
3 maximum level of 4,100,000 ppb. Phenol is corrosive and is toxic  
4 to cells. Sufficient exposure to phenol can cause cardiovascular  
5 problems as well as damage to liver, kidney, and other organ  
6 systems. EPA's Water Quality Criterion for phenol is 3,500 ppb  
7 to protect public health.

8           i.   Other Organics

9           Several other organic compounds which depress the  
10 central nervous system and can cause damage to other organ  
11 systems after sufficient exposure, were also found at very high  
12 levels in various water samples from the site. Some of those of  
13 concern include: trans-1,2-dichloroethane (found in 13 water  
14 samples, maximum level 390,000 ppb), 1,1,1-trichloroethane (found  
15 in 16 water samples, maximum level 340,000 ppb), and toluene  
16 (found in 15 water samples, maximum level 22,000 ppb).

17          j.   Arsenic

18          Human exposure to arsenic through ingestion of  
19 contaminated drinking water supplies has been shown to affect the  
20 cardiovascular system (heart and blood vessels) resulting in  
21 heart pains, hypertension, death of heart tissue and congestive  
22 heart failure. The central nervous system is also affected by  
23 arsenic resulting in muscle weakness, paralysis, mental  
24 retardation and irreversible nerve and brain damage in children.  
25 At high exposure levels, the effects on the nervous system can  
26 lead to convulsions, coma and death. Arsenic has also been shown

1 to be a human carcinogen when ingested or inhaled, and to cause  
2 chromosomal abnormalities. The EPA maximum contaminant level  
3 (see 40 C.F.R. § 141) is 0.05 ppm in drinking water. The level  
4 of arsenic in water that may result in one additional cancer in  
5 an exposed population of 1,000,000 is 0.0022 ppb. Analysis of  
6 samples from Western Processing have identified arsenic  
7 concentrations of 600 ppb in groundwater and 102,000 ppb in soil.

8 k. Chromium

9 Occupational exposure to chromium compounds has  
10 resulted in lesions and ulcers on exposed skin and mucous  
11 membranes, as well as perforation in the nose. Several studies  
12 of exposed workers have shown that hexavalent chromium causes  
13 lung cancer. Hexavalent chromium and possibly other chromium  
14 compounds are mutagenic in many experimental systems. EPA's  
15 maximum contaminant level (MCL) for chromium is 50 ppb in  
16 drinking water. Analysis of samples from Western Processing have  
17 identified chromium concentrations of 65,000 ppb in groundwater  
18 and 7,600,000 ppb in soil.

19 l. Cadmium

20 The effect of most concern for cadmium is its  
21 ability to accumulate in the kidney and cause damage to this  
22 organ. Such kidney damage has been found in both occupationally  
23 exposed persons and in a segment of the Japanese population that  
24 consumed excess cadmium in their foodstuffs. For persons with  
25 certain dietary deficiencies, exposure to cadmium can also result  
26 in softening of the bones and multiple fractures. Studies of  
27

1 workers have shown that cadmium causes emphysema and other lung  
2 damage and suggest that it may be a human carcinogen. The EPA's  
3 MCL and WQC for cadmium are 10 ppb. Analysis of samples from  
4 Western Processing have identified cadmium concentrations of  
5 60,000 ppb in groundwater and 420,000 ppb in soil.

6 m. Lead

7 Lead has been shown to adversely affect almost  
8 every system in the body. Exposure of children to existing  
9 elevated environmental concentrations of lead has resulted in a  
10 decrease in the concentration of hemoglobin, the blood protein  
11 responsible for transporting oxygen throughout the body, and in  
12 the production of neurobiological defects such as learning  
13 disabilities and behavioral problems. As exposure levels to lead  
14 increase, reproductive effects such as stillbirths and  
15 miscarriages increase in humans and severe, often irreversible  
16 damage develops in the blood-forming system, nervous system,  
17 cardiovascular system (heart and blood vessels), the kidneys and  
18 the liver. Experimentally, lead has been shown to produce birth  
19 defects. EPA's MCL and WQC to protect human health are 50 ppb  
20 for lead. Analysis of samples from Western Processing have  
21 identified lead concentrations of 3,300 ppb in groundwater and  
22 141,000,000 ppb in soil.

23 n. Mercury

24 Several cases of poisoning as a result of  
25 ingestion of mercury-contaminated foodstuffs have shown that the  
26 first part of the body affected by mercury is the central nervous  
27

1 system (CNS). This CNS effect leads to the loss of muscle  
2 coordination, impaired vision, speech and movement, mental  
3 disturbances, and tremors. Higher exposures to mercury result in  
4 death. Because mercury can cross the placenta and affect the  
5 fetus, exposure to it has resulted in the birth of children with  
6 severe brain damage, blindness, seizures and learning  
7 difficulties. Mercury may also cause reproductive effects and  
8 mutations in humans. EPA's MCL for mercury is 2 ppb. Analysis  
9 of samples from Western Processing have identified mercury  
10 concentrations of 46 ppb in groundwater and 360 ppb in soil.

11 o. Nickel

12 Exposure of workers and the general population to  
13 nickel, both orally and through skin contact, has resulted in  
14 skin problems, including inflammation, chronic eczema, and  
15 allergic reactions. Exposed workers have developed various types  
16 of lung damage and perforated nasal septa, as well as cancers of  
17 the lung and nasal cavities. Experimentally, nickel has been  
18 shown to cause reproductive effects at low levels in drinking  
19 water. A WQC of 13.4 ppb has been recommended by EPA to protect  
20 human health. Analysis of samples from Western Processing have  
21 identified nickel concentrations of 280,000 ppb in groundwater  
22 and 1,900,000 ppb in soil.

23 p. Cyanides

24 The toxicological effects of cyanides are a result  
25 of their rapid conversion to hydrogen cyanide once they enter the  
26 human body. Hydrogen cyanide blocks the utilization of oxygen by  
27

1 the body and affects the heart and brain. At high exposures,  
2 respiration is inhibited which can result in death. The WQC  
3 recommended by EPA for cyanide is 200 ppb. Analyses of samples  
4 from Western Processing have identified cyanide concentrations of  
5 35,000 ppb in groundwater and 179,000 ppb in soil.

6 22. Beginning on or about April 15, 1983, and continuing to  
7 the present, in response to and caused by the release and  
8 threatened release of hazardous substances from the Western  
9 Processing facility into the environment and pursuant to CERCLA,  
10 EPA and its contractors undertook and are undertaking a response  
11 action as defined in Section 101(25) of CERCLA, 42 U.S.C.  
12 § 9601(25). The response action included security measures such  
13 as fencing to preclude public access, testing, and removal of  
14 drums of chemicals and removal of bulk chemicals in tanks and  
15 impoundments.

16 23. To date, the United States Government has incurred  
17 response costs in excess of \$9,000,000 in its response action at  
18 the Western Processing facility. The United States continues to  
19 incur response costs.

20 24. The Federal response action at the Western Processing  
21 facility was not and is not inconsistent with the National  
22 Contingency Plan.

23 25. The United States of America has satisfied any  
24 condition precedent to a response action and to recovery under  
25 applicable law, including Section 107 of CERCLA, 42 U.S.C. § 9607.

1        26. The acts and omissions of defendants have contributed  
2 to the releases and threatened releases of chemicals, including  
3 hazardous substances, from the Western Processing facility.

4        27. Defendants Western Processing Company and Garmt J.  
5 Nieuwenhuis are the operators and/or were the operators of the  
6 Western Processing facility at the time of the response action  
7 and/or are persons who, at a time of release or disposal of  
8 hazardous substances, operated the Western Processing facility at  
9 which such hazardous substances were released or disposed of.  
10 Defendants Western Processing Company and Garmt J. Nieuwenhuis  
11 are the owners and/or were the owners of the Western Processing  
12 facility at the time of the response action and/or are persons  
13 who, at a time of disposal or a release of hazardous substances  
14 at the Western Processing facility owned the Western Processing  
15 facility, at which such hazardous substances were released or  
16 disposed of. Generator defendants, by contract, agreement, or  
17 otherwise, arranged for disposal or treatment, or arranged with a  
18 transporter for transport for disposal or treatment, of hazardous  
19 substances owned or produced by them at the Western Processing  
20 site, and hazardous substances from each generator defendant were  
21 delivered to and stored, treated, or disposed of at the Western  
22 Processing site. Transporter defendants accepted hazardous  
23 substances for transport to disposal or treatment facilities.  
24 They selected the Western Processing site, and transported  
25 hazardous substances there. Said owner/operator, generator, and  
26 transporter defendants are jointly and severally liable to the

1 United States for the costs of the response action under  
2 Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and  
3 (2).  
4

5 SECOND CLAIM

6 28. Paragraphs 1 through 21, 26, and 27 are realleged.

7 29. Section 106 of CERCLA, 42 U.S.C. § 9606, provides:

8 (a) In addition to any other action  
9 taken by a State or local government, when the  
10 President determines that there may be an  
11 imminent and substantial endangerment to the  
12 public health or welfare or the environment  
13 because of an actual or threatened release of  
14 a hazardous substance from a facility, he may  
15 require the Attorney General of the United  
16 States to secure such relief as may be  
17 necessary to abate such danger or threat, and  
18 the district court of the United States in the  
19 district in which the threat occurs shall have  
20 jurisdiction to grant such relief as the  
21 public interest and the equities of the case  
22 may require. The President may also, after  
23 notice to the affected State, take other  
24 action under this section including, but not  
25 limited to, issuing such orders as may be  
26 necessary to protect public health and welfare  
27 and the environment.

19 (b) Any person who willfully violates,  
20 or fails or refuses to comply with, any order  
21 of the President under subsection (a) may, in  
22 an action brought in the appropriate United  
23 States district court to enforce such order,  
24 be fined not more than \$5,000 for each day in  
25 which such violation occurs or such failure to  
26 comply continues.

23 30. There is or may be an imminent and substantial  
24 endangerment to the public health or welfare or the environment  
25 because of actual or threatened releases of hazardous substances  
26 from the Western Processing facility and the Administrator of EPA  
27

1 by his delegate has made and does hereby make such a  
2 determination pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

3 31. The owner/operator, generator, and transporter  
4 defendants are jointly and severally liable to abate the imminent  
5 and substantial endangerment presented by the releases and  
6 threatened releases of hazardous substances from the facility.

7  
8 THIRD CLAIM

9 32. Paragraphs 1 through 21 are realleged.

10 33. Section 7003(a) of the Resource Conservation and  
11 Recovery Act, 42 U.S.C. § 6973(a), provides:

12 Notwithstanding any other provision of this  
13 Act, upon receipt of evidence that the  
14 handling, storage, treatment, transportation  
15 or disposal of any solid waste or hazardous  
16 waste may present an imminent and substantial  
17 endangerment to health or the environment, the  
18 Administrator may bring suit on behalf of the  
19 United States in the appropriate district  
20 court to immediately restrain any person  
21 contributing to such handling, storage,  
22 treatment, transportation, or disposal to stop  
23 such handling, storage, treatment,  
24 transportation, or disposal or to take such  
25 other action as may be necessary. The  
26 Administrator shall provide notice to the  
27 affected State of any such suit. The  
28 Administrator may also, after notice to the  
affected State, take other action under this  
section including, but not limited to, issuing  
such orders as may be necessary to protect  
public health and the environment.

34. "Hazardous waste" is defined in Section 1004(5) of  
RCRA, 42 U.S.C. § 6903(5), as:

a solid waste, or combination of solid waste,  
which because of its quality, concentration,

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1 or physical, chemical, or infectious  
2 characteristics may:

3 (A) cause, or significantly contribute to an  
4 increase in mortality or an increase in  
5 serious irreversible, or incapacitating  
6 reversible, illness; or

7 (B) pose a substantial present or potential  
8 hazard to human health or the environment when  
9 improperly treated, stored, transported, or  
10 disposed of, or otherwise managed.

11 35. Chemicals brought into, kept at, mixed and handled at,  
12 spilled, leaked and dumped on the ground at, that may spill or  
13 leak at, and/or migrating into the soil and groundwater under and  
14 from the site are hazardous wastes as defined in RCRA, 42 U.S.C.  
15 § 6903(5), and are also solid wastes as defined in RCRA,  
16 42 U.S.C. § 6903(27).

17 36. The handling, storage, treatment, and disposal of solid  
18 and hazardous wastes at the site presented, presents and may  
19 present an imminent and substantial endangerment to health and  
20 the environment within the meaning of Section 7003 of RCRA,  
21 42 U.S.C. § 6973.

22 37. The owner/operator, generator, and transporter  
23 defendants have contributed to and are contributing to the  
24 handling, storage, treatment, and disposal of the solid and  
25 hazardous waste at the site.

26 38. The owner/operator, generator, and transporter  
27 defendants are jointly and severally liable for remedying, and  
28 for governmental costs associated with remedying, the  
endangerment at the site.

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1 and Garmt J. Nieuwenhuis provided EPA and its contractors with  
2 access to the site for the purpose of carrying out the terms of  
3 the Order.

4 42. On April 15, 1983, EPA informed defendants Western  
5 Processing and Garmt J. Nieuwenhuis that because they had  
6 indicated they would not implement the requirements of the Order,  
7 EPA would undertake a Federal response and would move on site to  
8 begin securing the site and carrying out certain cleanup  
9 activities. EPA began its on-site activity that day and  
10 continued it through the spring and early summer of 1983, as  
11 summarized in paragraph 22 above.

12 43. Owner/operator defendants are liable for injunctive  
13 relief requiring them to comply with parts of the order not  
14 completed by EPA, including, but not limited to, the requirements  
15 that they shall not accept or process hazardous substances, they  
16 shall provide information related to hazardous substances on the  
17 site and they shall continue to allow access and entry by EPA and  
18 its contractors.

19 44. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3)  
20 provides:

21 If any person who is liable for a release  
22 or threat of release of a hazardous substance  
23 fails without sufficient cause to properly  
24 provide removal or remedial action upon order  
25 of the President pursuant to section 104 or  
26 106 of this Act, such person may be liable to  
27 the United States for punitive damages in an  
28 amount at least equal to, and not more than  
three times the amount of any costs incurred  
by the Fund as a result of such failure to  
take proper action. The President is

1 authorized to commence a civil action against  
2 any such person to recover the punitive  
3 damages, which shall be in addition to any  
4 costs recovered from such person pursuant to  
section 112(c) of this Act. Any moneys  
received by the United States pursuant to this  
subsection shall be deposited in the Fund.

5 45. Owner/operator defendants are liable for treble damages  
6 pursuant to CERCLA Section 107(c)(3) for three times the cost of  
7 the response action identified in the order and undertaken by EPA  
8 and its contractors. Owner/operator defendants are also liable  
9 for penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

10  
11 FIFTH CLAIM

12 46. Paragraphs 1 through 7 and 16 through 21 are realleged.

13 47. Section 3013 of RCRA, 42 U.S.C. § 6934, provides:

14 (a) AUTHORITY OF ADMINISTRATOR.--If the  
15 Administrator determines, upon receipt of any  
information, that--

16 (1) the presence of any hazardous waste at a  
17 facility or site at which hazardous waste is,  
or has been, stored, treated, or disposed of,  
18 or

19 (2) the release of any such waste from such  
facility or site may present a substantial  
hazard to human health or the environment, he  
20 may issue an order requiring the owner or  
operator of such facility or site to conduct  
21 such monitoring, testing, analysis, and  
reporting with respect to such facility or  
22 site as the Administrator deems reasonable to  
ascertain the nature and extent of such hazard  
23 . . . .

24 (c) PROPOSAL.--An order under subsection (a)  
or (b) shall require the person to whom such  
25 order is issued to submit to the Administrator  
within 30 days for the issuance of such order  
26 a proposal for carrying out the required  
27  
28

1 monitoring, testing, analysis, and reporting.  
2 The Administrator may, after providing such  
3 person with an opportunity to confer with the  
4 Administrator respecting such proposal,  
5 require such person to carry out such  
6 monitoring, testing, analysis, and reporting  
7 in accordance with such proposal, and such  
8 modifications in such proposal as the  
9 Administrator deems reasonable to ascertain  
10 the nature and extent of the hazard.

11 (d) MONITORING, ETC., CARRIED OUT BY  
12 ADMINISTRATOR.--(1) If the Administrator  
13 determines that no owner or operator referred  
14 to in subsection (a) or (b) is able to conduct  
15 monitoring, testing, analysis, or reporting  
16 satisfactory to the Administrator, if the  
17 Administrator deems any such action carried  
18 out by an owner or operator to be  
19 unsatisfactory, or if the Administrator cannot  
20 initially determine that there is an owner or  
21 operator referred to in subsection (a) or (b)  
22 who is able to conduct such monitoring,  
23 testing, analysis, or reporting, he may--

24 (A) conduct monitoring, testing, or analysis  
25 (or any combination thereof) which he deems  
26 reasonable to ascertain the nature and extent  
27 of the hazard associated with the site  
28 concerned, or (B) authorize a State or local  
authority or other person to carry out any  
such action, and require, by order, the owner  
or operator referred to in subsection (a) or  
(b) to reimburse the Administrator or other  
authority or person for the costs of such  
activity.

48. Pursuant to Section 3013(a), 42 U.S.C. § 6934(a), EPA  
issued an Order to owner/operator defendants on August 16, 1982,  
which was served on them on August 16, 1982. The Order required  
owner/operator defendants to submit a proposal to EPA for the  
sampling, analysis, monitoring, and reporting of hazardous wastes  
at their facility and further required them to disclose certain  
information relating to their past practices at the site. The

1 Order apprised owner/operator defendants that if EPA determined  
2 that they were not able to submit and implement such a proposal,  
3 EPA, pursuant to Section 3013(d)(1) of RCRA, 42 U.S.C.  
4 § 6934(d)(1), would perform the ordered activities itself and  
5 reserve the right to seek reimbursement at a later date. The  
6 Order afforded owner/operator defendants the opportunity to  
7 confer with EPA respecting the development of such a proposal.  
8 The Order required response within thirty (30) days.

9       49. Owner/operator defendants did not submit the ordered  
10 proposal to EPA as required.

11       50. As a result of owner/operator defendants' failure to  
12 submit a proposal, EPA undertook the necessary monitoring,  
13 testing, and analysis. In undertaking this work, EPA has  
14 incurred to date expenses in an amount estimated to be no less  
15 than \$184,450 and continues to incur expenses.

16       51. Owner/operator defendants have failed to disclose  
17 certain information regarding past site practices to EPA, as  
18 required by the Order.

19       52. On December 30, 1982, EPA issued to owner/operator  
20 defendants an Order pursuant to RCRA Section 3013(d)(1),  
21 42 U.S.C. § 6934(d)(1), requiring owner/operator defendants to  
22 reimburse EPA for the costs incurred to date. The owner/operator  
23 defendants, through counsel, have refused to comply with the  
24 Order.

25       53. Pursuant to Section 3013(e) of RCRA, 42 U.S.C.  
26 § 6934(e), owner/operator defendants are liable for equitable  
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1 relief requiring compliance with the above Orders under § 3013 of  
2 RCRA and EPA is entitled to reimbursement of monitoring, testing,  
3 and analysis costs pursuant to Section 3013(d)(1) of RCRA,  
4 42 U.S.C. § 6934(d)(1). Owner/operator defendants are also  
5 liable under Section 3013(e) of RCRA for civil penalties not in  
6 excess of \$5,000 per day, per Order, that owner/operator  
7 defendants failed to comply with any Section 3013 RCRA  
8 Administrative Order.

9  
10 SIXTH CLAIM

11 54. Paragraphs 1 through 7 are realleged.

12 55. Sections 3001, et seq., of RCRA, 42 U.S.C. §§ 6921,  
13 et seq., required EPA to promulgate regulations governing the  
14 management of hazardous waste. Those regulations, which were  
15 promulgated and became effective on November 19, 1980, have been  
16 amended from time to time. See 40 C.F.R. Parts 260-65;  
17 Parts 122-24, recodified as Parts 270 and 271, 45 Fed. Reg.  
18 14,146 (April 1, 1983). Section 3005 of RCRA, 42 U.S.C. § 6925,  
19 requires a permit for treating, storing, or disposing hazardous  
20 waste.

21 56. Western Processing submitted to EPA a form entitled  
22 "Notification for Hazardous Waste Activity" and a Part A  
23 application for the required permit. The submission of the form  
24 and application to EPA by this existing facility, inter alia,  
25 qualified Western Processing for "interim status", which means  
26 that the Company is treated by EPA as having been issued a RCRA  
27

1 permit for those activities listed on its permit application. An  
2 actual permit may be issued later in the administrative process.  
3 As a facility with "interim status", Western Processing is  
4 required to comply with the hazardous waste management  
5 regulations, including "Interim Status Standards". See 40 C.F.R.  
6 Part 265 and 40 C.F.R. § 122.23 (recodified in 40 C.F.R.  
7 § 270.70, et seq.).

8 57. On March 31, 1981, EPA inspected the Western Processing  
9 facility and observed that defendants were in violation of  
10 numerous Interim Status Standards and other applicable  
11 regulations. The standards violated related to storage  
12 practices, container and drum management, waste piles, surface  
13 impoundments, and many recordkeeping and plan development  
14 requirements.

15 58. On May 8, 1981, EPA issued an Administrative Order  
16 pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to defendant  
17 Western Processing. The Order required compliance with the  
18 Interim Status Standards being violated by Western Processing.

19 59. On May 10, 11, and 18, 1982, EPA inspected the  
20 Processing site and observed that defendants were in violation of  
21 numerous Interim Status Standards and related regulations. The  
22 activities and violations observed included:

23 a. Spent acids contaminated with phenols had been  
24 treated to remove the phenols. The treatment of the spent acids  
25 took place in a surface impoundment known as Pond 21 on  
26 owner/operator defendants' facility. Such treatment of spent  
27

1 acids constituted treatment of a hazardous waste in a surface  
2 impoundment and was not listed by owner/operator defendants on  
3 the Western Processing facility's Part A application. See  
4 40 C.F.R. § 122.23(c) (recodified as Section 270.72).  
5 Additionally, owner/operator defendants at their facility  
6 redistill spent halogenated and nonhalogenated solvents  
7 (specifically wastes in categories F001, F002, F003, and F005 as  
8 listed in 40 C.F.R. § 261.31) and, during the process, generate  
9 still bottoms which were and are stored on site. Storage of such  
10 still bottoms was not listed by owner/operator defendants on the  
11 facility's Part A application. See 40 C.F.R. § 122.23(b)  
12 (recodified as Section 270.71(a)). In addition, the large  
13 surface impoundment on owner/operator defendants' facility known  
14 as the gyp pond was used for the treatment, storage, and disposal  
15 of hazardous wastes. Such treatment, storage, and disposal were  
16 not listed by owner/operator defendants on the facility's Part A  
17 application. See 40 C.F.R. § 122.23(b), recodified as  
18 Section 270.71(a);

19           b. On or after November 19, 1980, on numerous  
20 occasions and on numerous dates, hazardous waste was accepted by  
21 owner/operator defendants from a foreign (Canadian) source  
22 without prior notification of the Regional Administrator. See  
23 40 C.F.R. § 265.12(a);

24           c. Owner/operator defendants' facility had no written  
25 waste analysis plan. See 40 C.F.R. § 265.13(b);  
26  
27  
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1           d. Owner/operator defendants had not developed  
2 written waste analysis procedures and sampling methods. See  
3 40 C.F.R. § 265.13(c);

4           e. Owner/operator defendants' fencing of the facility  
5 was damaged at two places. See 40 C.F.R. § 265.14(b);

6           f. Signs warning against unauthorized access were not  
7 present on the western portion and were hidden by foliage on the  
8 southern portion of owner/operator defendants' perimeter fence.  
9 See 40 C.F.R. § 265.14(c);

10           g. Owner/operator defendants had not developed a  
11 written inspection schedule. See 40 C.F.R. § 265.15(b);

12           h. Owner/operator defendants had not developed an  
13 adequate written inspection log or summary. See 40 C.F.R.  
14 § 265.15(d);

15           i. Owner/operator defendants had not developed  
16 written training plans and records. See 40 C.F.R. §§ 265.16(d)  
17 and (e);

18           j. Owner/operator defendants' facility did not  
19 maintain aisle space to allow unobstructed movement of personnel,  
20 fire protection equipment or spill control equipment in an  
21 emergency. See 40 C.F.R. § 265.35;

22           k. Owner/operator defendants had not attempted to  
23 enter into arrangements with local fire, police, and emergency  
24 response teams. See 40 C.F.R. § 265.37(a), and had not  
25 documented refusals of such local authorities to enter into such  
26 arrangements. See 40 C.F.R. § 265.37(b);

1           l.   Owner/operator defendants had not prepared a  
2 contingency plan.   See 40 C.F.R. §§ 265.51 and 265.53;

3           m.   Owner/operator defendants did not keep an adequate  
4 written operating record at the facility noting the location of  
5 hazardous waste at the facility and the quantity at each location  
6 and dates of treatment.   See 40 C.F.R. §§ 265.73(b)(1) and (2);

7           n.   Owner/operator defendants had not implemented a  
8 ground water monitoring, sampling, and analysis program and  
9 system with attendant recordkeeping and reporting for the surface  
10 impoundment containing acid wastes (Pond 21) and for the large  
11 surface impoundment known as the gyp pond.   See 40 C.F.R.  
12 §§ 265.90 through 265.94;

13           o.   Owner/operator defendants had not developed a  
14 written closure plan.   See 40 C.F.R. § 265.112;

15           p.   Owner/operator defendants had not developed a  
16 written estimate of the cost of closure of the facility.   See 40  
17 C.F.R. § 265.142;

18           q.   Several containers containing hazardous waste on  
19 owner/operator defendants' site were corroded or badly  
20 deteriorated.   See 40 C.F.R. §§ 265.31 and 265.171. These wastes  
21 included spent acetone, spent methyl ethyl ketone, and spent  
22 chlorinated solvents;

23           r.   Drums containing hazardous wastes were stored by  
24 owner/operator defendants in a manner which might cause them to  
25 leak.   See 40 C.F.R. §§ 265.31 and 265.173(b). The drums  
26 contained spent chlorinated and spent non-chlorinated solvents  
27

1 and were stored in poorly drained muddy areas conducive to drum  
2 rusting or deterioration;

3 s. "Inspections" purported to have been made by  
4 owner/operator defendants of their own container storage areas  
5 did not result in the detection, notation, or correction of  
6 leaking, corroded or deteriorated containers and such  
7 "inspections", if they occurred, were wholly inadequate. See  
8 40 C.F.R. § 265.174;

9 t. Owner/operator defendants' surface impoundments,  
10 specifically the gyp pond and Pond 21, were not maintained with  
11 two feet of freeboard. See 40 C.F.R. § 265.222;

12 u. Owner/operator defendants' earthen berm  
13 surrounding the gyp pond did not have a protective cover, such as  
14 grass, shale, or rock. See 40 C.F.R. § 265.223;

15 v. Owner/operator defendants had not inspected the  
16 freeboard level of the two surface impoundments each operating  
17 day to ensure compliance with the two-foot freeboard requirement  
18 and had not inspected the earthen berm surrounding the gyp pond  
19 to detect leaks or deterioration at least weekly. See 40 C.F.R.  
20 § 265.226. Owner/operator defendants also had not remedied the  
21 deterioration existing in the earthen berm. See 40 C.F.R.  
22 § 265.15(c);

23 w. Owner/operator defendants' waste piles of flue  
24 dust (listed in 40 C.F.R. § 261.32 as K061) were not covered or  
25 otherwise managed to control wind dispersal. See 40 C.F.R.  
26 § 265.251, and;

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1           x. Leachate caused by precipitation seeping through  
2 defendants' flue dust waste piles and still bottom waste piles  
3 are hazardous wastes as defined by 40 C.F.R. § 261.3(c)(2). The  
4 waste piles were not placed on an impermeable base, leachate and  
5 runoff were not collected, and the piles were not protected from  
6 precipitation. See 40 C.F.R. § 265.253.

7           60. Owner/operator defendants' activities as described in  
8 paragraphs 60a through x violated RCRA Subtitle C regulations  
9 found at 40 C.F.R. § 122.23(c) (recodified as Section 270.72),  
10 122.23(b) (recodified as Sections 270.71(a)), 265.12(a),  
11 265.13(b), 265.13(c), 265.14(b), 265.14(c), 265.15(b), 265.15(c),  
12 265.15(d), 265.16(d) and (e), 265.35, 265.37(a), 265.37(b),  
13 265.51, 265.53, 265.73(b)(1) and (2), 265.90-.94, 265.112,  
14 265.142, 265.31 and 171, 265.173(b), 265.174, 265.222, 265.223,  
15 265.226, 265.251, and 265.253.).

16           61. On June 4, 1982, EPA issued a second Administrative  
17 Order to defendant Western Processing pursuant to Section 3008 of  
18 RCRA, 42 U.S.C. § 6928, which superseded and dismissed the Order  
19 of May 8, 1981. The second Order, inter alia, advised defendant  
20 Western Processing of the violations of the regulations  
21 identified in the preceding paragraph and, inter alia, ordered  
22 compliance with those regulations.

23           62. Prior to about April 15, 1983, owner/operator  
24 defendants had continued from day to day to fail to cure or  
25 correct any of the violations listed in paragraph 59 and, based  
26

1 on information and belief, continued daily to violate many of the  
2 regulations cited therein.

3 63. Additional requirements of the Interim Status Standards  
4 came into effect in July 1982 (47 Fed. Reg. 15 032-74, 16 544-61)  
5 and relate to liability insurance and closure financial  
6 assurance. These financial standards required submittals to EPA  
7 of evidence of compliance. Owner/operator defendants have failed  
8 to submit such evidence. See 40 C.F.R. §§ 265.143 and 265.147.

9 64. Owner/operator defendants' activities as described in  
10 paragraph 63 violated RCRA Subtitle C regulations found at  
11 40 C.F.R. §§ 265.143 and 265.147.

12 65. On November 16 and 17, 1982, EPA inspected the Western  
13 Processing facility and made additional observations, including:

14 a. Four interconnected, above-ground, surface  
15 impoundments were being used to treat and store water containing  
16 hazardous waste. Such treatment and storage was not listed by  
17 defendants in their permit application. See 40 C.F.R.  
18 § 122.23(c), recodified as 270.72;

19 b. Two of the four impoundments referred to above  
20 were leaking onto the ground. In addition, waste water flowed  
21 through relief ports from the lower of the four interconnected  
22 impoundments onto the ground. This leakage and flow onto the  
23 ground constitute disposal. Neither act of disposal was listed  
24 by owner/operator defendants on the facility's Part A  
25 application. See 40 C.F.R. § 122.23(c), recodified as 270.72;

1 c. Owner/operator defendants' had not implemented a  
2 ground water monitoring, sampling, and analysis program and  
3 system with attendant recordkeeping and reporting requirements  
4 for the impoundments referred to in subparagraphs a and b above.  
5 See 40 C.F.R. §§ 265.90 through 265.94;

6 d. The above-referenced impoundments were not  
7 maintained with two feet of freeboard. See 40 C.F.R. § 265.222,  
8 and;

9 e. Inspections by owner/operator defendants of the  
10 above-referenced impoundments, if such inspections occurred, did  
11 not result in the detection, notation, or correction of leaks.  
12 See 40 C.F.R. § 065.226. In addition, owner/operator defendants  
13 had not inspected the freeboard level of their surface  
14 impoundments each operating day to ensure compliance with the  
15 two-foot requirement. See 40 C.F.R. § 265.226. Owner/operator  
16 defendants also failed to remedy leaks, failures, or  
17 deterioration in the impoundments. See 40 C.F.R. § 265.15(c).

18 66. Owner/operator Defendants' activities as described in  
19 paragraphs 65(a) through (e) violated RCRA Subtitle C regulations  
20 found at 40 C.F.R. §§ 122.23(c) (recodified as 270.72), 265.90  
21 through 265.94, 265.222, 265.226, and 265.15(c).

22 67. Pursuant to Section 3008(a) of RCRA, 42 U.S.C.  
23 § 6928(a), owner/operator defendants are liable for injunctive  
24 relief for their violations of regulations promulgated pursuant  
25 to RCRA, including 40 C.F.R. Part 265 and 40 C.F.R. § 122.23,  
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1 recodified at 270 through 270.73. Pursuant to 3008(g) of RCRA,  
2 42 U.S.C. § 6928(g), owner/operator defendants are liable for  
3 civil penalties not to exceed \$25,000 for each day owner/operator  
4 defendants violated any requirement of Subtitle C of RCRA,  
5 including 40 C.F.R. Part 265 and 40 C.F.R. § 122.23, recodified  
6 at 270 through 270.73.

7  
8 SEVENTH CLAIM

9 68. Paragraphs 1 through 7 and 55 through 65 are realleged.

10 69. On July 10, 1982, EPA, pursuant to Section 3007(a) of  
11 RCRA, 42 U.S.C. § 6927(a), issued an information request to  
12 defendant Garmt J. Niewenhuis as President of defendant Western  
13 Processing. The request asked that said defendants provide EPA  
14 with information pertaining to activities required of defendant  
15 Western Processing by the Administrative Order issued on June 4,  
16 1982, pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

17 70. Said defendants have failed to submit the requested  
18 information to EPA, thereby violating Section 3007(a) of RCRA, 42  
19 U.S.C. § 6927(a).

20 71. Pursuant to Section 3008(g) of RCRA, 42 U.S.C.  
21 § 6928(g), owner/operator defendants are liable for a civil  
22 penalty not to exceed \$25,000 for their failure to provide the  
23 information requested by EPA pursuant to Section 3007(a) of RCRA,  
24 42 U.S.C. § 6927(a).

EIGHTH CLAIM

72. Paragraphs 1 through 7 and 65 are realleged.

73. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) provides:

Except in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

74. Section 402 of the CWA, 33 U.S.C. § 1342, provides for the issuance of permits for the discharge of pollutant(s) into navigable waters.

75. Owner/operator defendants have discharged and continue to discharge water containing chemicals, which are pollutants, based on information and belief, into Mill Creek by way of an underground pipe leading from a sump or catch basin on owner/operator defendants' property. The sump or catch basin collects polluted water from the lower of the four surface impoundments described in subparagraphs 65(a) and 65(b).

76. The underground pipe leading from owner/operator defendants' facility to Mill Creek is a point source of pollutant discharge as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

77. Mill Creek is a tributary of Puget Sound and is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

78. The discharge of pollutants from the underground pipe to Mill Creek was not and is not authorized by permit.

1 79. Owner/operator defendants have violated and continue to  
2 violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3 80. Pursuant to Section 309 of the CWA, 33 U.S.C. § 1319,  
4 owner/operator defendants are liable for injunctive relief and  
5 civil penalties not to exceed \$10,000 per day for violation of  
6 § 301 of the CWA, 33 U.S.C. § 1311.

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8

NINTH CLAIM

9 Claim of the State of Washington Pursuant  
10 to Section 107(a) of the Comprehensive Environmental  
11 Response Compensation & Liability Act, 42 U.S.C. § 9607(a)

12 81. Paragraphs 1 through 80 are realleged.

13 82. The State of Washington has incurred and will continue  
14 to incur costs of removal and remedial actions taken and to be  
15 taken at the Western Processing facility within the meaning of  
16 Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A). All  
17 such costs have been incurred and will be incurred in a manner  
18 not inconsistent with the national contingency plan.

19 83. As of the date of this complaint the State of  
20 Washington has incurred costs in excess of \$500,000. These costs  
21 were incurred incident to the implementation of an "Interim  
22 Remedial Measure" which consisted primarily of paving and  
23 covering portions of the facility to prevent the continued  
24 migration from the site of hazardous substances entrained in  
25 stormwaters. This action was taken by the Washington State  
26 Department of Ecology in the fall of 1983.

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1           84. The State of Washington has suffered and will continue  
2 to suffer damages for injury to, destruction of, or loss of  
3 natural resources, and has incurred reasonable costs assessing  
4 said damages, caused by the release of hazardous substances from  
5 or at the Western Processing facility within the meaning of  
6 Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C). "Natural  
7 Resources" is defined at Section 101(16) of CERCLA, 42 U.S.C.  
8 § 9601(16), to include, inter alia,

9           land, fish, biota, air, water, ground water,  
10          drinking water supplies, and other such  
11          resources belonging to, managed by, held in  
12          trust by, appertaining to, or otherwise  
            controlled by . . . any state or local  
            government . . .

13          The State of Washington owns, manages, holds in trust, and  
14          otherwise controls natural resources which have been damaged at  
15          the Western Processing facility. Said natural resources  
16          suffering damages include, but are not limited to, land and  
17          ground water.

18           85. Generator defendants, by contract, agreement, or  
19          otherwise arranged for disposal or treatment, or arranged with a  
20          transporter for transport for disposal or treatment, of hazardous  
21          substances owned or possessed by them at the Western Processing  
22          facility. Hazardous substances from each generator defendant  
23          were delivered to and stored, treated, or disposed of at the  
24          Western Processing site. Transporter defendants accepted  
25          hazardous substances for transport to the Western Processing site  
26

1 which they selected, for disposal or treatment. Transporter  
2 defendants transported hazardous substances to the Western  
3 Processing site. The owner/operator, generator, and transporter  
4 defendants are jointly and severally liable to the State of  
5 Washington for State's costs incurred or to be incurred during  
6 removal and remedial actions and for damages to natural resources  
7 under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

8  
9 TENTH CLAIM

10 Claim of the State of Washington Pursuant  
11 to Ch. 70.105A of the Revised Code of Washington (RCW)

12 86. Paragraphs 1 through 85 are realleged.

13 87. Chapter 70.105A RCW created the Hazardous Waste Control  
14 and Elimination Account, an account in the Washington General  
15 Fund, which is administered by the State Department of Ecology.  
16 The account is funded by a fee on hazardous waste generators, a  
17 fee on TSD facilities, and legislative appropriations.

18 88. The Washington Department of Ecology is authorized to  
19 use funds in the Hazardous Waste Control and Elimination Account  
20 to respond to and control the release or potential release of  
21 hazardous substances and hazardous wastes which could pose a  
22 threat to public health or the environment. RCW 70.105A.060(3).

23 89. The elements and compounds identified in paragraph 21  
24 are hazardous substances. The releases and potential releases  
25 described above pose a threat to public health or the  
26  
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28

1 environment. The Department of Ecology has used approximately  
2 \$500,000 from the Hazardous Waste Control and Elimination Account  
3 to respond to and control said releases and potential releases.

4 90. The Washington Attorney General, at the request of the  
5 Department of Ecology, is authorized to bring an action to  
6 recover monies withdrawn from the Hazardous Waste Control and  
7 Elimination Account which are used to respond to an unpermitted  
8 spill or discharge or to control the release or threatened  
9 release of hazardous substances. RCW 70.105A.060(5).

10 91. Recovery under RCW 70.105A.060 shall be from any person  
11 owning or controlling the hazardous substance spilled or  
12 discharged or released. The owner/operator and generator  
13 defendants owned or controlled the hazardous substances which  
14 were spilled or discharged or released at the Western Processing  
15 facility. The owner/operator and generator defendants are liable  
16 to repay the Hazardous Waste Control and Elimination Account the  
17 approximately \$500,000 the Department of Ecology has used to  
18 respond to and control the spills, discharges, or releases of  
19 hazardous substances from the Western Processing facility. The  
20 owner/operator and generator defendants are also liable to repay  
21 the Hazardous Waste Control & Elimination Account should the  
22 Department of Ecology be required to use funds from that account  
23 to respond, in the future, to spills, discharges, or releases of  
24 hazardous substances from the Western Processing facility.

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ELEVENTH CLAIM

Claim of the State of Washington  
Pursuant to Ch. 90.48 Revised Code of Washington

92. Paragraphs 1 through 91 are realleged.

93. Chapter 90.48 RCW, at Section 90.48.080, provides, in part, that

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters. . . .

94. The owner/operator and generator defendants have violated RCW 90.48.080 by permitting or by allowing the discharge of hazardous substances which tended to cause pollution from the Western Processing facility into waters of the state, including discharges to Mill Creek and to groundwater underlying the facility.

95. Chapter 90.48 RCW, at section 90.48.142, provides, in part, that any person who violates RCW 90.48.080, or the terms of a waste discharge permit issued pursuant to RCW 90.48.160, and thereby causes injury to state resources or a reduction in the state waters shall be liable to pay the state damages in an amount equal to the sum necessary to replenish said resources and restore said water source to its condition prior to the injury.

96. The Attorney General is authorized by RCW 90.037 and RCW 90.48.142 to bring any appropriate action to carry out the provisions of ch. 90.48 RCW.

97. The owner/operator defendants violated RCW 90.48.080 and the terms of a waste discharge permit issued pursuant to RCW 90.48.160. The owner/operator defendants caused injury to state resources and a reduction in the quality of state waters. The generator defendants, as alleged above, have violated RCW 90.48.080. The generator defendants caused injury to state resources and a reduction in the quality of state waters. The owner/operator and generator defendants are liable to pay the state damages in an amount equal to the sum necessary to replenish said resources and restore state waters to their conditions prior to the injury.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Enter judgment against owner/operator, generator, and transporter defendants in an amount equal to the United States Government's and the People of the State of Washington's investigative, cleanup and response costs at the Western Processing site.

2. Enter judgment against owner/operator, generator, and transporter defendants in an amount equal to the People of the

1 State of Washington's damages to natural resources and reasonable  
2 investigative costs.

3 3. Issue an injunction compelling owner/operator,  
4 generator, and transporter defendants to abate the release and  
5 threatened release of hazardous substances and solid and  
6 hazardous wastes from the Western Processing site, which actions  
7 of the defendants shall be subject to the prior approval of EPA.

8 4. Issue an injunction compelling owner/operator,  
9 generator, and transporter defendants to remedy the conditions  
10 which have caused or may contribute to or present an imminent and  
11 substantial endangerment to the public health, welfare, and the  
12 environment, which actions of the defendants shall be subject to  
13 the prior approval of the EPA.

14 5. Issue an injunction requiring owner/operator defendants  
15 to comply with the Administrative Order issued under Section 106  
16 of the Comprehensive Environmental Response, Compensation, and  
17 Liability Act (CERCLA), including, but not limited to, ordering  
18 them to continue to allow access to the Western Processing site  
19 to EPA and its contractors for continuation and completion of its  
20 response as well as other response activities pursuant to CERCLA,  
21 to comply with the prohibition on acceptance or processing of  
22 hazardous substances, and to provide information.

1        6.    Enter judgment against owner/operator defendants for  
2 punitive damages in an amount at least equal to and not more than  
3 three times the amount of costs incurred by the United States  
4 Government in undertaking response activities not undertaken by  
5 owner/operator defendants in accordance with the administrative  
6 order issued to owner/operator defendants under Section 106 of  
7 CERCLA.

8        7.    Assess and order owner/operator defendants to pay civil  
9 penalties of not more than \$5,000 per day for each day  
10 owner/operator defendants failed to comply with the  
11 Administrative Order issued under Section 106 of CERCLA.

12        8.    Enter judgment against owner/operator, generator, and  
13 transporter defendants to reimburse EPA for costs incurred in  
14 performing the monitoring, testing, and analysis at the facility,  
15 pursuant to Section 3013 of RCRA.

16        9.    Issue an injunction compelling owner/operator  
17 defendants to furnish operating information in compliance with  
18 the Administrative Order issued by EPA pursuant to  
19 Section 3013(a) of RCRA.

20        10.   Assess and order owner/operator defendants to pay  
21 civil penalties of not more than \$5,000 per day per order for  
22 each day through the date of judgment, that owner/operator  
23 defendants failed to comply with the Section 3013(a) RCRA  
24 Administrative Order and the Section 3013(d) RCRA Administrative  
25 Order.  
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1        11. Issue an injunction enjoining the owner/operator  
2 defendants from operating and managing their facility in  
3 violation of the RCRA Interim Status Standards and related  
4 regulations including, but not limited to, an injunction  
5 enjoining the owner/operator defendants from operating the site  
6 until the required liability insurance and financial assurances  
7 are demonstrated to EPA and the Court.

8        12. Assess and order owner/operator defendants to pay civil  
9 penalties not to exceed \$25,000 per day per violation of the RCRA  
10 Interim Status Standards and related regulations for each  
11 violation through the date of judgment.

12        13. Assess and order owner/operator defendants to pay civil  
13 penalties not to exceed \$25,000 for owner/operator defendants'  
14 failure to provide the information requested by EPA pursuant to  
15 Section 3007(a) of RCRA.

16        14. Issue an injunction enjoining owner/operator defendants  
17 from discharging pollutants into Mill Creek, except as authorized  
18 by permit.

19        15. Assess and order owner/operator defendants to pay civil  
20 penalties of not more than \$10,000 per day for each day  
21 owner/operator defendants discharged pollutants into Mill Creek  
22 in violation of Section 301 of the CWA.

1 16. Award plaintiffs' costs; and

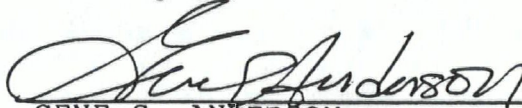
2 17. Grant such other relief as is deemed appropriate.

3 DATED this 21<sup>ST</sup> day of November, 1986.

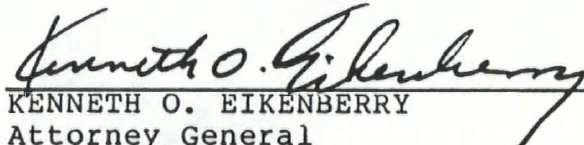
4 Respectfully submitted,

5 

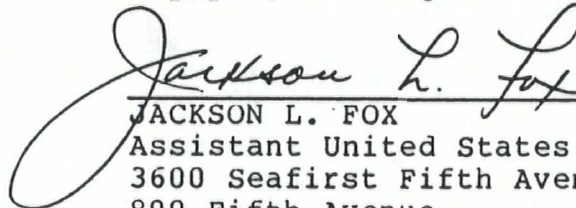
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